Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Truth-in-Billing and	)	CC Docket No. 98-170
Billing Format	)	
	)	
National Association of State	)	CC Docket No. 04-208
Utility Consumer Advocates' Petition	)	
For Declaratory Ruling Regarding	)	
Truth-in-Billing	)	
	)	

REPLY COMMENTS OF MCI, INC.

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INTRODUCTION

MCI, Inc. respectfully submits these comments in reply to the comments submitted in this *Second Further Notice of Proposed Rulemaking*. The data submitted by commenters demonstrate that the billing problems that most concern consumer advocates at this time are associated with *wireless* carriers, which—until now—have been almost entirely exempt from the Commission's truth-in-billing regulations. In contrast, wireline carriers have been subject to the Commission's current rules for several years. Therefore, the Commission should refrain from imposing new truth-in-billing rules on wireline carriers at this point. Instead, the Commission should allow time for its preexisting truth-in-billing rules to affect wireless carriers' billing practices. Wireline carriers should not be subject to new and costly regulatory burdens simply because wireless carriers abused their regulatory freedom. Moreover, the Commission should make clear that its truth-in-billing rules preempt state laws that might impose a patchwork of inconsistent requirements on carriers. The Commission should reaffirm its commitment to broad, flexible truth-in-billing rules that will protect consumers without unnecessary expense to carriers.

I. THERE IS NO JUSTIFICATION FOR IMPOSING NEW TRUTH-IN-BILLING RULES ON WIRELINE CARRIERS.

In its *First Truth-in-Billing Order*, the Commission exempted wireless carriers from the majority of its newly-promulgated truth-in-billing rules because it found that the record did not reflect a high level of consumer complaints from wireless customers.[1] Over the past five years, however, that situation has changed. In the comments submitted in response to this *Second*

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[1] *See In the Matter of Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking* , CC Docket No. 98-170 (rel. May 11, 1999) ("*First Truth-in-Billing Order*"), at ¶ 16.

Further Notice of Proposed Rulemaking,[2] the focus of the specific evidence of alleged consumer abuses concerns wireless, not wireline, carriers.[3] In fact, there is a striking absence of evidence in the comments related to complaints specifically against wireline carriers. The fact that the data cited in the comments focus so heavily on wireless billing practices indicates that the Commission's current truth-in-billing rules have been effective at influencing wireline carrier billing practices. Wireline carriers should not now be subject to additional burdensome and unnecessarily rigid billing regulations simply because of the billing practices of, at the time unregulated, wireless carriers. The Commission's rules already require carriers to have well-organized bills that include plain language, non-misleading explanations of all charges, and clearly inform consumers of where and how to contact their carrier with questions about their bill. Wireless carriers have not been subject to these requirements. Now that wireless carriers must also comply with these rules, the Commission should allow those rules to take effect. Only in the unlikely event that the currently existing rules are insufficient to prevent wireless carriers from issuing confusing billing information should the Commission consider additional truth-in-billing rules.

Indeed, even if the Commission ultimately decides to impose further truth-in-billing requirements, it should consider applying any additional rules only to wireless carriers in order to remedy alleged billing abuse in that industry. There are significant differences in the structures of wireline and wireless services that give wireline carriers greater incentive to provide consumers with complete, clear and accurate billing information. Specifically, in contrast to

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[2] *In the Matter of Truth-in-Billing and Billing Format*, *Nat'l Assoc. of State Utility Consumer Advocates' Pet. for Declaratory Ruling Regarding Truth-in-Billing*, *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, CG Docket No. 04-208 (rel. March 18, 2005) ("*Second Truth-in-Billing Order*" or "*Second Further Notice*").

[3] *See, e.g.*, Initial Comments of AARP *et al.,* at 1-3; Comments of the Attorneys General at 2-3.

wireless service, residential wireline consumers do not sign a contract that commits them to a particular carrier for a year or any other length of time, and there are no penalties to a consumer for switching to a different wireline carrier.[4] Consumers unhappy with their wireline phone bills can (and do) "vote with their feet" and sign up with another carrier that provides more complete information—or provides the same information at a lower monthly cost. Therefore, wireline carriers are constantly seeking to improve their relationships with consumers, through improved customer service, lower cost, and by responding quickly and accurately to consumers' questions about billing or any other aspect of their service.

Given the free and intense competition among wireline carriers, there is simply no need to impose costly burdens on wireline carriers to remedy the alleged abusive billing practices of the wireless carriers. Moreover, even considering the structural differences between wireline and wireless carriers, there is no evidence in the record that the Commission's existing truth-in-billing rules will be insufficient to curb wireless billing practices of which consumers are complaining.

The new rules the Commission is considering are costly and raise serious First Amendment concerns. In the absence of evidence that the current truth-in-billing rules are ineffective, the Commission should refrain from micromanaging wireline carriers' billing practices by promulgating additional rules that restrict innovation and creativity in carriers' billing. Instead, the Commission should allow its current rules to take effect in the wireless industry, and only then consider whether additional regulation is necessary.

[4] The consumer may be subject to a charge for the switch in providers, but the charge is minimal and often paid by the winning carrier.

II. THE COMMISSION CAN AND SHOULD PREEMPT STATE LAWS THAT FRUSTRATE UNIFORM AND PREDICTABLE TRUTH-IN-BILLING REGULATION.

Under well established principles derived from the Supremacy Clause of the United States Constitution, federal law is the supreme law of the land. Accordingly, it is a fundamental tenet of American jurisprudence that federal law prevails over — and preempts — state law that conflicts with federal law or stands as an obstacle to its goals, rendering that state law unenforceable. This Court should follow these controlling preemption principles in this case and hold that state laws that impose stricter or otherwise inconsistent truth-in-billing requirements on wireline and wireless carriers are preempted by the Telecommunications Act and by this Commission's implementing regulations.

State law is preempted and unenforceable when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1983). Agency regulations, as well as federal statutes, carry this preemptive weight: Where Congress has delegated authority and the agency acts within the scope of that authority, the agency may preempt and "render unenforceable state or local laws that are otherwise not inconsistent with federal law." *City of New York v. Fed. Communications Comm'n*, 486 U.S. 57, 63-64 (1988). Here, it is clear that the Commission's truth-in-billing rules preempt state laws that would impose different or more stringent billing requirements on carriers.

The Commission unquestionably has authority to promulgate national rules such as its truth-in-billing rules.[5] In promulgating its current truth-in-billing rules, the Commission was acting squarely within this broad grant of congressionally-delegated authority. It is equally clear that

[5] *See First Truth-in-Billing Order* at ¶¶ 20-27.

the Commission's truth-in-billing regulations preempt those state regulations that are not consistent with the federal regulations. *See* 47 C.F.R. § 64.2400(c) (the Commission's rules "are not intended to preempt the adoption or enforcement of *consistent* truth-in-billing requirements by the states") (emphasis added). Section 64.2400(c) merely restates black-letter preemption law: State regulations that are inconsistent with federal law are preempted. And, in defining what laws are consistent, the Commission should recognize that state laws that impose a multitude of different and possibly more stringent requirements on carriers will undermine the pro-competitive, uniform regulatory scheme that the truth-in-billing rules are intended to support.

In light of these controlling preemption principles, as the Commission has tentatively concluded, state truth-in-billing requirements that are more stringent than federal requirements are not "consistent" with those federal requirements, and thus are preempted. For example, the Commission denied NASUCA's request for a declaratory ruling prohibiting carriers from listing charges other than government-mandated fees on telephone bills.[6] The Commission explicitly ruled that carriers are permitted to list charges in line items on telephone bills.[7] Thus, any state law that now purports to prohibit carriers from listing charges in a line item would be irreconcilable with the Commission's decision to allow such a practice. What federal law permits, state law would prohibit. As the Commission has recognized, "overbroad state regulations in this area may frustrate our federal rules."[8] This reasoning applies equally to wireline and wireless carriers, and the Commission need not rely solely on Section 332(c)(3)(A) of the Act to find preemption in this instance.

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[6] *Second Truth-in-Billing Order* at ¶ 23.
[7] *Id*. (finding that line items are not "unreasonable" under Section 201(b)).
[8] *Id*. at ¶ 24.

Moreover, states' interference with the federal regulatory scheme, and the burden on carriers that results from that interference, is not merely incidental. As described in MCI's initial comments in this proceeding, it is extremely expensive for carriers such as MCI to comply with constantly evolving state laws that regulate billing format.[9] In addition to the expense of complying with varied state truth-in-billing regulations, it is frequently difficult to ascertain which of many state regimes should apply to a particular customer, because many of MCI's customers are multisite businesses. Like wireless carriers, wireline carriers such as MCI frequently offer national corporations with regional or national calling or other service plans.

The Commission's truth-in-billing rules provide carriers with certainty and predictability when determining how to format their bills. The Commission should not allow a multiplicity of inconsistent state regulations to undermine that certainty. Federal law authorizes the Commission to preempt state regulation in this area—for wireline as well as wireless carriers—and the Commission should act on that authorization.

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Respectfully submitted,

/s/

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[9] *See* Comments of MCI, Inc. at 3-4.